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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/509,315 04/26/00 DECOSTER

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EXAMINER

HM12/0509

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MCQUEENEY, P

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

05/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/509,315

Applicant(s)

DECOSTER ET AL.

Examiner

P. E. McQueeney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

1. Acknowledgement is made of applicants' second submission of items concerning a filing under 35 U.S.C. 371 filed April 26, 2000, preliminary amendment filed June 15, 2000 and information disclosure statement filed March 24, 2000.

Information Disclosure Statement

2. The information disclosure statement filed March 24, 2000 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Applicants state in their information disclosure statement cover letter that copies of the international search report and listed documents are attached. The English language version of the International Search Report was attached. However, none of the documents listed thereon or on form 1449 were. Please resubmit these documents for consideration.

Specification

3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 17-32, 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Reich *et al.* (WO 94/06403). Reich *et al.* disclose a hair conditioning shampoo in stable emulsion or suspension form. Reich *et al.* claim, in claim 1, a "hair conditioning shampoo in stable emulsion or suspension form comprising: (i) 5 to 40% by weight of at least one anionic surfactant; (ii) 0.01 to 5% by weight of a vinyl-type cationic polymer having a hair conditioning effect and a charge density ranging between 150 and 400; (iii) 0.1 to 10% by weight of at least one dispersed water-insoluble hair conditioning agent;... and (v) the remainder water." Reich *et al.* claim, in claim 2, that the vinyl-type polymer is selected from the group consisting of dimethyldiallyl ammonium chloride/acrylamide copolymers containing at least 50% dimethyldiallyl ammonium chloride monomer. Reich *et al.* claim, in claim 11 that "said water-insoluble hair conditioning agent is selected from the group consisting of ..., aminosilicones, ...". Reich *et al.* disclose the preferred structure of their aminosilicone at page 6. These claims and the disclosure meet the limitations of applicants' claim 17-31. Reich *et al.* disclose at page 4 that Polymer JR 400 and Merquat 550 are equivalent in terms of binding to keratin substrate in the absence of water-insoluble silicone. At the same location, Reich *et al.* disclose that in the presence of dimethicone, the binding of

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Polymer JR is decreased by 55% while Merquat 550 was unaffected. This disclosure reads on applicants' claim 32. Reich *et al.* disclose in the examples the process of washing 3.5 g tresses of virgin or bleached European hair with 20% sodium lauryl sulfate solution. Each tress was treated with the desired conditioning shampoo for one minute, then rinsed under running tap water set at 105°F. This disclosure reads on applicants' claims 35 and 36.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 17-32 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reich *et al.*, as discussed above.

Reich *et al.* disclose a wide range of anionic surfactant, cationic polymer and

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water-insoluble hair conditioning agent. Reich *et al.* do not disclose applicants' specific ranges. In the absence of a showing of criticality, the step of varying the concentration is deemed to be an obvious parameter manipulatable by an artisan to obtain the best possible results.

As discussed above, Reich *et al.* disclose the same composition as applicants. Reich *et al.* do not disclose the pH of their composition. Absent evidence to the contrary, as Reich *et al.* disclose the same composition as applicants, it is the position of the examiner that the composition of Reich *et al.* has the same pH as the composition of applicants.

6. Claims 17-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reich *et al.*, as discussed above, alone or in combination with Akhter *et al.* (US 4,678,606).

Reich *et al.* disclose studies using Polymer JR 400 and Merquat 550 at page 4. Reich *et al.* do not include cationic guar gums in their studies. Akhter *et al.* disclose at col. 2, line 2 through col. 3, line 17 that examples of cationic, water-soluble thickening agents include hydroxypropyl trimethyl ammonium guar gum, quaternized cellulose ether, homopolymers of dimethyl diallyl ammonium chloride, copolymers of dimethyl diallyl ammonium chloride and acrylamide, quaternized vinyl pyrrolidone acrylate or methacrylate copolymers of amino alcohols, etc. It is the position of the examiner that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a variety of cationic polymers in claim 1 of Reich *et al.* based on

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the variety of cationic polymers available to the skilled artisan, as evidenced by Akhter *et al.* One skilled in the art would expect the cationic polymers to have similar properties.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. E. McQueeney whose telephone number is 703-306-5827. The examiner can normally be reached on M, T, H, F 7:45 AM to 6:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-3592 for regular communications and 703-308-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

pem
May 5, 2001


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600